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NATIONAL INDIAN GAMING COMMISSION

3

CLASS II CLASSIFICATION STANDARDS

4

GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

5

WITH THE EASTERN SHAWNEE TRIBE

6

7

HELD IN OKLAHOMA CITY, OKLAHOMA

8

ON AUGUST 9, 2006

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REPORTED BY: TRENA K. BLOYE, CSR

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ON BEHALF OF THE EASTERN SHAWNEE TRIBE:

Jim Hunt	Chris Samples
R.C. Kisse	Nancy McAlister
Jack Ross	John G. Ghostbear
Dennis Captain	
Bryce Washington	

COMMISSIONER CHONEY: Welcome.

2 Before we get started we would like to let you  
3 know that this meeting will be recorded. We  
4 have a court reporter here. And it is a  
5 matter of public record. And if you would  
6 like to have a copy of the transcript once  
7 it's typed and provided to us, we will put it  
8 on our website. So if you would like to have  
9 a copy, you may obtain it from our website.

10 And also any other persons can do  
11 the same, you know, for your meeting, if you  
12 wanted to hear what the other tribes said, you  
13 can obtain their transcripts also.

14 Also for the record, by way of  
15 introduction, I want to introduce Phil Hogen.  
16 He's the chairman of the National Indian  
17 Gaming Commission. My name is Chuck Choney,  
18 commissioner with the National Indian Gaming  
19 Commission.

20 And seated next to Phil is Penny  
21 Coleman, our acting general counsel. Sitting  
22 next to her is Michael Gross, senior attorney,  
23 Office of General Counsel. And Tim Harper,  
24 region director out of Tulsa.

25 Seated next to me is Natalie

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1 Hemlock, special assistant to the Commission.

2 And Joe Valandra, he's our chief of staff.

3       Seated next to him is John Hay, senior  
4       attorney, Office of General Counsel. And  
5       Brian Moody, investigator from our Tulsa  
6       office. And we have other investigators who  
7       are in and out here.

8               Also, for the record, if you could  
9       introduce yourselves.

10              MR. HUNT: Good morning. Jim  
11       Hunt, general manager for Bordertown Casino.

12              MR. GHOSTBEAR: John Ghostbear,  
13       serving as the gaming attorney for the Eastern  
14       Shawnee Tribe. I'm from here in Tulsa (sic.).

15              MS. McALISTER: Good morning.  
16       Nancy McAlister, gaming commissioner for  
17       Bordertown Bingo.

18              MR. SAMPLES: Good morning. Chris  
19       Samples, chief of staff for the Eastern  
20       Shawnee Tribe.

21              MR. CAPTAIN: Dennis Captain,  
22       second councilman for the Eastern Shawnee.

23              MR. ROSS: Jack Ross, second  
24       chief, Eastern Shawnee Tribe.

25              MR. KISSEE: R.C. Kisse --

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1       (Inaudible.) Eastern Shawnee.

2              MR. WASHINGTON: Bryce Washington,  
3       business committee member.

4              COMMISSIONER CHONEY: Okay. Also,

5       since we are here to hear your thoughts and  
6       ideas on Class II, if there is any other  
7       matter you would like to discuss pertaining to  
8       your tribe, we will have to go off the record.  
9       Since this is a public meeting, I'm sure you  
10      don't want other tribes to know what your  
11      personal tribal business is.

12                     So, with that, Chairman Hogen.

13                     CHAIRMAN HOGEN:   Okay.   Thank you.

14      Welcome to this document government-to-  
15      government consultation session.   On the 25th  
16      of May this year, NIGC published in the  
17      "Federal Register" some proposals to amend  
18      some definitions and to adopt a set of  
19      regulations that would, hopefully, better  
20      distinguish the difference between electronic  
21      and technologic aids tribes can use to play  
22      uncompacted Class II games from those  
23      electronic facsimiles of games of chance and  
24      slot machines of any kind that require  
25      compacts to play.

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1                     This has been a long, ongoing  
2      effort and much of it got its impetus from  
3      what happened here in Oklahoma or was  
4      happening.   Of course, history has shown that  
5      eventually there was a compact, maybe not a

6 perfect compact, kind of a take-it-or-leave-it  
7 compact as far as some tribes were concerned.

8 But we know that Class II gaming  
9 is, has been, will always be important to  
10 tribes both as sometimes a primary means of  
11 their revenue and gaming activity, and  
12 certainly comes into play when you are  
13 negotiating compacts. We know that the  
14 current compact has an expiration time. And  
15 you will, at some time in the future, be back  
16 to the table, want to continue at that format.

17 In addition to these  
18 classification standards that were published  
19 in May, this Friday we will be publishing some  
20 technical standards that relate to kind of  
21 what's inside the black box part of the gaming  
22 equipment. That's not a new idea. We have  
23 discussed that.

24 We have made proposals, put them  
25 on our website in the past. But when it came

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1 time to go official with this, we discovered  
2 that because of rapid advances in technology,  
3 they got a little stale. So we have tweaked  
4 them a little bit. And while they look a  
5 great deal like what we published on our  
6 website, there will be some modernization or  
7 changes.

8                   The comment period for those  
9                   regulations will end on the 30th of September.  
10                  We have also extended the comment period for  
11                  these classification standards that day.

12                 On the 19th of September in  
13                 Washington, DC we will hold a public hearing  
14                 addressing this subject, both the dec regs and  
15                 the classification standards. The format is  
16                 still a work in progress, but we expect we  
17                 will have several panels. We will have some  
18                 tribal leadership. We will have some  
19                 regulators, some manufactures and vendors of  
20                 these devices, probably some state  
21                 representatives will make a presentation.

22                 And once we hear what's said  
23                 there, we review the comments that will have  
24                 been received by the 30th of September, we  
25                 will close the door and we will look at all of

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1                 those comments and look at what we have  
2                 written, decide, A, are we going to go forward  
3                 with all of this; and, B, what are those  
4                 regulations going to look like? If we go  
5                 forward we are cautiously optimistic that we  
6                 can have this on the road and moving forward  
7                 by the -- before the fall is over.

8                 So we don't have any precise

9        dates, but we are eager to bring this long  
10        exercise to a successful conclusion.

11                So, having said that, we are eager  
12        to hear what Eastern Shawnee has to say about  
13        this. We read about you folks from time to  
14        time in the newspaper with respect to where  
15        you might want to go and what you do and where  
16        you are, so forth. So we know Class II is  
17        important to you.

18                So we turn it over to you to share  
19        your comments with us, please.

20                MR. HUNT: Well, good morning. We  
21        appreciate the opportunity to speak with the  
22        NIGC today and share our viewpoint. We have  
23        spent a fair amount of time preparing for this  
24        meeting. What we are going to do is turn it  
25        over to our attorney, John Ghostbear and

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1        Commissioner McALISTER, and they will share  
2        our viewpoints with you. John.

3                MR. GHOSTBEAR: That was quick.

4                MR. HUNT: Yes.

5                MR. GHOSTBEAR: Okay. The  
6        Commissioner for the tribe has prepared some  
7        fairly, I think, succinct and very significant  
8        questions to pose to NIGC. But before I turn  
9        it over to her, I had the benefit of doing  
10        some work for the Cherokee Nation enterprise



11       entity. I do a little bit for them, but not  
12       that much.

13                       But the reason why I mention that  
14       is I was involved in some litigation and some  
15       other matters that were going on in the year  
16       2002. Now, realize that the current  
17       membership of the commission is not the same  
18       as it was back at that time. But I think it's  
19       important for me to inquire on behalf of the  
20       Eastern Shawnee Tribe, as I recall, published  
21       in the regulations at that time -- I think it  
22       was in June, June 17th, if I'm not mistaken.

23                       I believe there was some statement  
24       by the commissioners, not by their staff, but  
25       by the commissioners that they were concerned

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1       about some decisions that had come down from  
2       federal courts, different federal courts  
3       interpreting IGRA and the regulations, or, in  
4       some cases, the lack of regulations or the  
5       lack of background that your predecessors had  
6       laid for federal courts to make a decision.

7                       It's my recollection that those  
8       regulations specifically said that you were  
9       going to drop the process, that is the  
10       Commission was going to drop the process at  
11       that time, go back, and relook at the case law

12 decisions and compare that with the  
13 legislative history of IGRA and come up with  
14 some regulations that would adopt what the  
15 federal courts were saying. Not only telling  
16 NIGC, but the tribes how they interpreted the  
17 law.

18 And because of that, I think it's  
19 important and significant that in reviewing  
20 the May 25th proposed regulations, I see some  
21 things that I think are disturbing. And I  
22 think in your preface in those May 25th  
23 regulations, I think there is some reference  
24 in there about, well, we formed the committee  
25 and we did this and we had some concerns. We

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1 heard some concerns of various members of the  
2 advisory council or advisory committee.

3 But we are interpreting the  
4 legislative history of IGRA. And that because  
5 of that, we are coming up with several new  
6 things. And I think Nancy may be in a  
7 position to get into some of those things  
8 specifically.

9 But I am wondering, in reviewing  
10 the proposed regs that have been published,  
11 the May 25th regs, I don't see where some of  
12 the federal court decisions have been adopted  
13 or have been followed, specifically about some

14 of the technical aspects of Class II. And I  
15 will be quiet here in just a minute.

16 What I think is important is  
17 that -- I'm kind of getting out of my field,  
18 but I believe that the tribal administrator  
19 may be able to shed some light, certainly if  
20 not this morning in a general fashion, I  
21 believe that he's in the process of preparing  
22 some information which shows the negative  
23 financial impact on tribal programs and tribal  
24 members.

25 And it's because of that that I

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1 think a lot of us out here in the field look  
2 at these new proposed regulations, and they  
3 pretty much say, I mean, if they are  
4 interpreted the way you have got them reduced  
5 to black and white, that is pretty much going  
6 to be the death nail for Class II electronic  
7 gaming as we know it.

8 And we have had this law on the  
9 books now for 18 years. In 2002 your  
10 predecessors made the declaration, while there  
11 is a body of case law out there now, and that  
12 they had made some decisions, they have come  
13 up with some things. We found some difficulty  
14 in establishing what everybody refers to as

15 the bright line, whatever that is. And we're  
16 going to go back, we're going to sit down,  
17 review the cases, what's gone on, and come up  
18 with some regulations.

19 And so they withdraw what they  
20 were proposing at that time. And so what I  
21 see now doesn't tract with what your  
22 predecessors, the Gaming Commission came up  
23 with at that time.

24 I would like, if you can, give us  
25 a detail as to what your predecessors, the

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1 Commissioners said in 2002 and what you are  
2 telling us now, the Eastern Shawnee Tribe, as  
3 to how you came up with these proposed  
4 regulations as of May 25th.

5 CHAIRMAN HOGEN: Well, let me talk  
6 a little bit about that. The last Commission  
7 recognized a need for clarity in this area  
8 that had a lot of confusion surrounding it.  
9 The last Commission found it necessary to  
10 close a number of facilities, because tribes  
11 had crossed the line. They were doing gaming  
12 that wasn't Class II and they didn't have  
13 compacts, and some of those tribes got fined  
14 millions of dollars.

15 They took some action to amend  
16 some definitions, and they did propose a

17 process to try and classify games and then  
18 eventually, for a number of reasons, you know,  
19 withdrew that proposal. But I think it  
20 encourage us, those who followed, to continue  
21 the effort because of that great need to have  
22 that clarity.

23 We studied very carefully the  
24 Indian Gaming Regulatory Act, continue to  
25 study it and its legislative history and the

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1 court decisions that were rendered in  
2 connection with that.

3 In terms of the definition change  
4 that they made, as I read the Indian Gaming  
5 Regulatory Act and its legislative history, I  
6 didn't find support for the proposition that a  
7 game can be an electronic facsimile of a game  
8 of chance and still be Class II if it's bingo.  
9 I read it to say if it's an electronic  
10 facsimile of a game of chance, it, by  
11 definition, is Class III. So I think it's  
12 appropriate to clarify that in our  
13 regulations.

14 With respect to studying the case  
15 law, you know -- and most of those cases dealt  
16 with two kinds of machines, the Mega Mania  
17 gaming machine, and I'm sure you folks know a

18 whole lot more about it than I do. But I  
19 think it was kind of a clunky computer  
20 terminal kind of thing that had four bingo  
21 cards on it. You couldn't play it until  
22 twelve people were ready to play. And once  
23 you played it, it took about a minute to play  
24 the game.

25 Of course, the Justice Department  
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1 was out there and said, "You can't have  
2 gambling devices in Indian country unless you  
3 have got one of those Class III compacts that  
4 IGRA talks about, and you don't have a  
5 compact. This is unlawful." The Court said,  
6 "Wait a minute. No. This isn't a gambling  
7 device. This is an aid to the game of bingo,  
8 Class II. The players are playing the bingo.  
9 If you don't have the players, nobody is  
10 participating, nothing really happens. So,  
11 sorry, Department of Justice, this is not  
12 prohibited with the Johnson Act when you read  
13 it with the technologic aid provision in the  
14 Regulatory Act."

15 So, a thread that emerged from  
16 that line of cases to me was that you have got  
17 to have the players outside the machine to  
18 make it work. You have got to have some  
19 participation. And if you are going to have

20       some participation, you have to, of course,  
21       have a little time to participate. You have  
22       to have a time of interval to do that.

23               So the regulations that we have  
24       proposed wouldn't require twelve people to  
25       play the game. Instead, the game could be

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1       played with two people. It doesn't say it  
2       takes a minute to play the game. It takes ten  
3       seconds to play the game.

4               And it gets awful close to the  
5       line of electronic facsimile, but I think we  
6       can defend and justify that this is still  
7       player participation Class II and distinguish  
8       it from that electronic facsimile.

9               Looking at one of these Mega Mania  
10       cases the Court said, "While complete  
11       self-contained electronic or mechanical  
12       facsimiles of a game of chance, including  
13       bingo may, indeed, be forbidden by the Johnson  
14       Act. After the enactment of IGRA, we hold  
15       that mere technologic aids to bingo such as  
16       Mega Mania terminal or not."

17               Well, they said that bingo, I  
18       think, would fall into that category. If it's  
19       an electronic facsimile, it's prohibited.

20               And in another one of these Mega

21 Mania cases, the Court said, "Our decision  
22 rests on our determination that the Mega Mania  
23 game is bingo, or a game similar to bingo.  
24 And the Mega Mania machines meet the statutory  
25 definition of an aid to bingo. Our holding in

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1 this case, therefore, is limited to the Mega  
2 Mania form of bingo currently at issue."

3 That is they didn't say forever  
4 more if it's a bingo, you can do whatever you  
5 want to it electronically. If you just go up  
6 to the machine, put your money in and push the  
7 button once, and the machine automates  
8 everything else, that's become an electronic  
9 facsimile. You have taken the player out of  
10 it.

11 So we want to keep the player in  
12 it so that the Justice Department doesn't come  
13 along and criminally proceed against tribes  
14 for doing this if they don't have a compact.  
15 We don't want states to say, "Well, this isn't  
16 really what the Regulatory Act had in mind,  
17 and therefore we are going to legalize these  
18 things for everybody." Then who is going to  
19 go to the reservation to play them?

20 And I think we will preserve this  
21 important part of the Indian gaming Class II  
22 and bring clarity to this, so when tribes



23 negotiate, they know exactly where they stand,  
24 as will states, and the whole process will  
25 proceed in an atmosphere of greater clarity.

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1 MR. GHOSTBEAR: One followup and I  
2 will defer to Nancy.

3 I have been down this road before  
4 with other situations. But I know that the  
5 regulations implement -- the current  
6 regulations implemented by NIGC provide a  
7 mechanism that if that side of the table took  
8 one position, this side of the table took  
9 another position, there is a method existing  
10 right now to resolve the kinds of issues that  
11 I think may be contemplated by your new  
12 regulations.

13 I'm wondering whether or not NIGC  
14 or the staff have taken the position: Well,  
15 now, XYZ company out here is offering these  
16 particular characteristics which we have  
17 opined in the past are in violation of the  
18 spirit or the intent of the act. And because  
19 XYZ corporation is doing something like this,  
20 we are going to give them notice of violation  
21 to a particular tribe or tribes and say, "We  
22 disagree with your interpretation. We think  
23 this probably is Class III, subject to a

24 compact," or however you are going to address  
25 it.

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1 If, in fact, there is a  
2 disagreement, like I said, there is this  
3 mechanism -- and grant it, it does take some  
4 time. But, nonetheless, it certainly exists  
5 right now so that both sides could sit down  
6 and work something out, go through the  
7 administrative judge and let the  
8 administrative judge make a determination.  
9 That then goes to the Commission. And that if  
10 the tribe disagrees with that, or if the  
11 Commission disagrees, you then have an  
12 opportunity to go into the federal court and  
13 seek their clarification or judicial  
14 clarification.

15 Has the commission considered that  
16 as a part of the regulations? I mean, I  
17 didn't see that there was any mention of the  
18 existing appeal process right now, rather than  
19 making what I think are pretty significant,  
20 glaring changes in the law. Because, in  
21 essence, that's pretty much what you are doing  
22 here. You have got about five or six  
23 different things. I won't bore you with them.  
24 You know what they are.

25 But, anyway, have you allowed some

1 of these issues to allow a federal court to,  
2 you know, the Justice Department -- well, a  
3 couple of years ago. The Santee Souix and  
4 there was another tribe, Oklahoma tribe, I  
5 believe, but there was some disagreement as to  
6 the implementation of a particular machine.  
7 And I think your office at that time took one  
8 position. The DOJ took another position.

9 The DOJ lost their argument. I  
10 think at the trial level and at the circuit  
11 level. Low and behold, I think they said,  
12 "Well, we want to challenge that, so we are  
13 going to go into the United States Supreme  
14 Court and have some new law made."

15 Well, they kind of did. Because,  
16 as I recall, they filed a petition for writ de  
17 certiorari, briefs were submitted, and the  
18 United States Supreme Court said, "Huh-uh, we  
19 are not going to consider that issue before us  
20 at this time." And, of course, I guess we can  
21 take different interpretations as to what the  
22 Supreme Court meant at that time.

23 But, again, that's a situation  
24 where that's kind of this kind of an issue,  
25 the bright line test, for lack of a better

1 term, could be resolved in a situation where  
2 other tribes could file amicus briefs, set  
3 forth their positions, et cetera. But that is  
4 a process that could be used at this time to  
5 make the changes. If a Court agrees with you  
6 that, Well, this is what the NIGC says, the  
7 legislative history says about IGRA, but the  
8 tribes are taking a different tact or a  
9 different position.

10 Is that something that the  
11 Commission would be willing to consider, as  
12 opposed to these rather drastic changes in the  
13 regulations?

14 CHAIRMAN HOGEN: Well, what we  
15 have tried to preserve or build into this  
16 approach is a way for tribes to get to court  
17 if they disagree with what we have said. And  
18 I am as sure as I am sitting here, if we adopt  
19 these regulations it won't be long before that  
20 occurs. And that is good. We need clarity.  
21 And if we are wrong, we want the court to tell  
22 us where we are wrong and tell us soon so we  
23 can get it right. On the other hand, if we  
24 are right, let's clarify that and get on with  
25 it.

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1 So, very generally, the scheme set

2 up here is we write the rules. We certify  
3 laboratories to test the machines to see if  
4 they comply with the rules. If the lab says  
5 they do, then the tribe is good to go. They  
6 can put it on the floor. However, they send  
7 us a copy of that. We look at it. And I  
8 expect in most cases we're going to say, "You  
9 did a fine job. That's your Class II, good."  
10 But we may say, "We disagree with that. No,  
11 you can't do that."

12 Well, if a tribe or the vendor or  
13 both disagreed with that, they could appeal my  
14 decision to the full Commission. The  
15 Commission would decide I was right or wrong.  
16 Let's see assume they decided I was right,  
17 said, "No, you can't play Blazing Saddle  
18 Blankets." That's a final rule. And then  
19 under the ABA, the tribe could take us to U.S.  
20 district court and decide did we do the wrong  
21 things or were our rules wrong? Were they  
22 arbitrary and capricious or whatever. Then  
23 you could go to the district court, go to the  
24 Circuit Court of Appeals, go to the United  
25 Supreme Court if that were the path.

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1 MR. GHOSTBEAR: I think a subject  
2 is missing in this discussion in that under

3 the existing regulations, under the law, the  
4 statute and the regulations, a tribe, in the  
5 event that it took a different tact or  
6 different interpretation as to a particular  
7 game or games than NIGC, my understanding is  
8 that the tribe could then be exposed to not  
9 only a notice of violation, but also a closure  
10 order and a fine of up to \$25,000 per  
11 incident. And I'm not sure any of us  
12 understand what that means yet, because I  
13 don't think we have had a federal court tell  
14 us what that means.

15 But the tribe is at risk. I don't  
16 know that I disagree with what you are saying  
17 about how this could be done, but I'm just  
18 wondering if the regulations could be amended  
19 or changed to allow a tribe who has a  
20 legitimate concern, taking a different tact,  
21 but would not have the exposure to be totally  
22 shut down -- which, as you know, you went to  
23 court and you got that authority to do that --  
24 not be totally shut down and not be subject to  
25 the \$25,000 per incident or per occurrence or

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1 whatever it is that the law says.

2 Has NIGC contemplated making that  
3 type of -- in other words, that's a way -- I  
4 have heard -- I don't know this for a fact.

5 But I have heard that other industries other  
6 than the Indian gaming industry use that type  
7 of an approach to resolve things that both  
8 sides disagree about. And I'm just wondering  
9 if that's something that NIGC may contemplate  
10 and agree to amend the regulations to allow a  
11 tribe, if it's outfit, if to challenge the  
12 interpretation of your office and those  
13 regulations, within punitive (sic.), so they  
14 weren't going to be shut down during the  
15 course of that or that they are not going to  
16 be subject to some significant time.

17 CHAIRMAN HOGEN: Yeah. We will  
18 proceed under the Administrative Procedures  
19 Act that contemplates getting to court. We  
20 very much would like to look at models that  
21 you have referred to that other regulatory  
22 bodies or others might employ. If you want to  
23 send us those, we will look at them.

24 The time is rapidly lapsing here,  
25 and Ms. McAlister has some comments here, we

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1 probably ought to turn to her.

2 MS. McALISTER: I really have more  
3 questions than I have actual comments. I  
4 mean, I think we all know that the -- by these  
5 regulations that the game of bingo as we know

6       it, as it's played right now in every Indian  
7       gaming casino in probably the country will be  
8       changed. I mean, there are -- you know what  
9       the changes are. I won't list them all.

10               But there are provisions for  
11       two-by-two card, a five-by-five grid space,  
12       two seconds in between plays. All these  
13       things, limitations are in there.

14               And my first question is: Did you  
15       follow in your mind, did you follow the  
16       decisional case law in creating these  
17       restrictions? And by that I mean we know that  
18       IGRA lists the three criteria for bingo. We  
19       know that the Ninth Circuit Mega Mania case,  
20       or the Ninth Circuit, United States vs. 103  
21       Electronic Gaming Devices establishes that  
22       those three criteria for bingo are the only  
23       criteria that exists for a game to be bingo.

24               So did you follow those in the  
25       creation of these restrictions on bingo is my

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1       first question?

2               CHAIRMAN HOGEN: Yes.

3               MS. McALISTER: All right. And if  
4       you did, could you explain to me -- because I  
5       look at the cases and clearly we all have a  
6       difference of opinion. Are you telling me  
7       that this is your interpretation of what the



8 case law says?

9 CHAIRMAN HOGEN: Yes.

10 MS. McALISTER: Okay. And  
11 further, is it your interpretation of what  
12 IGRA says?

13 CHAIRMAN HOGEN: Yes.

14 MS. McALISTER: Okay. Then my  
15 next question is, given all these things are  
16 true, if this is your interpretation of the  
17 law, the decisional law as we know it today,  
18 we all agree that this will certainly restrict  
19 or slow down the play of bingo, don't we? Do  
20 we agree that that is correct?

21 CHAIRMAN HOGEN: Well, I would say  
22 that we will prevent it from becoming an  
23 electronic facsimile of a game of chance.

24 MS. McALISTER: Yeah. And I  
25 understand that is your goal. I'm simply

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1 asking you that -- I mean, we agree that none  
2 of the games that we are playing right now  
3 would be bingo according to these regulations.  
4 Is that correct?

5 CHAIRMAN HOGEN: They might be  
6 bingo, but it would be bingo played as an  
7 electronic facsimile of a game of chance.

8 MS. McALISTER: According to these

9 regulations. Correct?

10 CHAIRMAN HOGEN: Yes.

11 MS. McALISTER: In fact, wouldn't

12 the old Mega Mania, the first case one,

13 wouldn't that really -- it doesn't have all

14 the elements that are set forth in your

15 regulations, wouldn't it also be excluded?

16 CHAIRMAN HOGEN: I think the one

17 possibility where you might include Mega

18 Mania -- I think you could play Mega Mania

19 where you got down to one player and still

20 playing. I think we say you have got to be

21 two players playing.

22 MS. COLEMAN: Well, in addition,

23 Mega Mania was live session bingo. These

24 aren't even applicable to live session bingo.

25 MS. McALISTER: So you think maybe

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1 Mega Mania would play under these regulations?

2 CHAIRMAN HOGEN: It might have to

3 be tweaked with respect to that situation

4 where you have down to one player playing.

5 MS. McALISTER: Have you -- I

6 guess my next question is given the -- I think

7 we all agree that, certainly, going to slow

8 down, I mean in terms of quickness of a game

9 and those sorts of things change the games

10 that we recognize -- and when I say we, the

11       tribe -- Indian tribes everywhere recognize as  
12       Class II bingo. It certainly changes that.

13                     Do you have any thoughts on  
14       whether or not what the economic impact on the  
15       tribes will be as a result?

16                     CHAIRMAN HOGEN: Well, yeah. We  
17       think that we can save tribes from the  
18       disaster of closure or criminal prosecution by  
19       playing uncompact Class II gaming and, to  
20       that extent, save tribes from real financial  
21       disaster. We realize that they may have fewer  
22       dollars flowing through the facility if they  
23       aren't playing those one-touch games if they  
24       have to provide for those intervals for  
25       players to participate, and that might mean

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1       fewer dollars being generated on a given day.  
2       But balancing those two, closure, disaster  
3       versus a little slower play and maybe a little  
4       less revenue, we think the safe way to go is  
5       the right way to go.

6                     MS. McALISTER: Have you  
7       considered any sort of economic impact study  
8       on these issues?

9                     CHAIRMAN HOGEN: Yes.

10                    MS. McALISTER: And is there one  
11       in progress? Is there going to be one?

12                   CHAIRMAN HOGEN: Yes. Part of the  
13 public hearing will entertain discussion of  
14 that very subject. And we will have some  
15 input from some experts that we are working  
16 with.

17                   MR. GHOSTBEAR: Is that the  
18 September 19th hearing you are talking about?

19                   CHAIRMAN HOGEN: Yes.

20                   MS. McALISTER: And I guess, you  
21 know, my final question, and I think that  
22 Mr. Samples has, maybe, some comments --

23                   CHAIRMAN HOGEN: And we are  
24 encroaching on the Seneca-Cayuga's time.

25                   MS. McALISTER: Okay. Under IGRA

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1 the Indian gaming -- the National Indian  
2 Gaming Commission has an obligation to protect  
3 tribal gaming and, you know, hopefully as a  
4 result promote self -- economic  
5 self-determination for the tribes.

6                   Do you see these regulations  
7 consistent with that statement of IGRA?

8                   CHAIRMAN HOGEN: Yeah. As I just  
9 said a minute ago, we want to avoid closures.  
10 We want to avoid criminal penalties. And I  
11 think this is headed in exactly the direction  
12 that we are pointed.

13                   MS. McALISTER: Okay. I don't

14 have anything further. I better pass this  
15 over to Chris.

16 MR. SAMPLES: I just need about a  
17 minute. I just want to throw some general  
18 numbers at you based on our revenues generated  
19 from Class II gaming at Bordertown Casino.  
20 Just as a tribal budget, I would like to throw  
21 out the number of just over \$11 1/2 million  
22 dollars that our tribe resolves around that  
23 directly relates to Bordertown Bingo & Casino.  
24 So those social service programs that provide  
25 programs for our elders, that provide services

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1 for our younger people, especially  
2 economically challenged, those services  
3 directly come from our direct general fund at  
4 an excess of about \$6 1/2 million.

5 So, when I hear the statement,  
6 well, we're going to slow down the casino, it  
7 may slow down a little bit of revenue of the  
8 casino, that bothers me, because we have 2400  
9 people in our tribe. We are in the furthest  
10 northeast corner of Oklahoma. I'm just going  
11 to -- I'm going to say some things. I don't  
12 know if you know where we are located, if you  
13 have been to our tribal facility. But it's a  
14 very rural area.

15                   Our neighbor is a community of  
16                   about 2,000 people. These numbers that I  
17                   throw out at you at this point in time don't  
18                   directly effect the economic development  
19                   provided in that area or the northeast corner  
20                   of Ottawa County.

21                   So, with that said, with that  
22                   number of \$11 1/2 million, we usually spend an  
23                   additional \$1 1/2 million to that on  
24                   construction, infrastructure, tribal  
25                   expansion, community expansion, you know, just

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1                   doing those right things.

2                   So, you know, when I hear those  
3                   things that, "Oh, we may slow the revenue  
4                   down," it's disheartening to Native Americans,  
5                   all Native Americans in my opinion, the Native  
6                   Americans at this table, our 2400 tribal  
7                   members. That's really all I have to say.

8                   CHAIRMAN HOGEN: All right. I  
9                   think we are up against the time limit here.  
10                  And we would read and carefully consider any  
11                  additional comments you may want to send to  
12                  us.

13                  MR. GHOSTBEAR: We have until the  
14                  30th of September with which to submit our  
15                  written comments.

16                  CHAIRMAN HOGEN: Right. And we



18 August, 2006.

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Trena K. Bloye  
Certified Shorthand Reporter  
for the State of Oklahoma

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